

FCC MAIL SECTION

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Federal Communications Commission

DA 98-508

DISPATCHED

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Martin, Tiptonville and
Trenton, Tennessee)¹

)
)
)
) MM Docket No. 96-204
) RM-8876
) RM-9015
)

ORDER TO SHOW CAUSE

Adopted: March 11, 1998

Released: March 20, 1998

Comment Date: May 11, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the Notice of Proposed Rule Making, 11 FCC Rcd 12695 (1996), issued in response to the petition for rule making by Thunderbolt Broadcasting ("Thunderbolt"), licensee of Station WCMT(FM), Channel 269A, Martin, Tennessee, proposing the substitution of Channel 267C3 for Channel 269A at Martin and the modification of Station WCMT(FM)'s license to specify operation on the higher powered channel. In order to accommodate the upgrade at Martin, Thunderbolt also requested the deletion of vacant Channel 267C3 at Tiptonville, Tennessee. Comments and reply comments were filed by Twin States Broadcasting, Inc. ("Twin States"), Terry Hailey ("Hailey"), JoeMyers Productions, Inc. and Thunderbolt. Thunderbolt also filed a counterproposal.²

2. Hailey³ and Twin States filed comments opposing the deletion of Channel 267C3

¹ The community of Trenton, Tennessee, has been added to the caption.

² Public Notice of the filing of the counterproposal was given February 3, 1997, Report No. 2175.

³ In regard to the Tiptonville C3 allotment, Hailey notes that WENK was awarded the construction permit to construct what became Station WAAT at Tiptonville. On September 15, 1994, WENK filed applications for an extension of time to construct and for a modification of its construction permit, seeking to move its site. Hailey states that on October 27, 1995, the Commission refused to grant the modification sought by WENK and refused to grant the extension of time to permit construction at the original site. A petition for reconsideration was filed by WENK, but by letter dated July 31, 1996, the Commission denied the petition for reconsideration, cancelled the

at Tiptonville. Both state their intention to apply for Channel 267C3, if retained at Tiptonville. Hailey argues that Tiptonville is a thriving community and the county seat of Lake County. Hailey states that only a small cable system and a weekly newspaper provides opportunity for expression in Tiptonville.

3. In response to the expressed interests in retaining Channel 267C3 at Tiptonville, Thunderbolt counterproposes the allotment of Channel 247A to Tiptonville in lieu of Channel 267C3. In order to accommodate Channel 247A at Tiptonville, Thunderbolt proposes the substitution of Channel 249C3 for Channel 248C3 for Station WWEZ(FM) at Trenton, Tennessee. Thunderbolt argues that these channel shifts will be relatively simple to implement, and would enable Thunderbolt to expand its service to a significantly greater population. According to Thunderbolt, nearly 30,000 listeners would gain at least a 60 dBu service from Station WCMT(FM)'s upgraded facility. Thunderbolt states that the allotment of the higher class facility to Martin rather than to Tiptonville would provide FM service to the larger of the two communities and the more populous of those two communities's respective counties. The city of Martin has over four times the population of Tiptonville (1990 U.S. Census: 9,246 for Martin; 2,149 for Tiptonville). Thunderbolt contends that Martin is more deserving of upgraded service. It states that Martin is home to a significant branch of the prestigious University of Tennessee, where the enrollment has increased nearly 20% since 1988, currently standing at 5,746. Unlike Tiptonville, the city of Martin has a large general hospital, six major industrial plants, 350 businesses (including three banks) and is nearing completion of a 7.5 million regional park complex.

4. Hailey and Twin States reiterate their opposition to Thunderbolt's proposal. Twin States contends that Thunderbolt's proposal should not be adopted since it is the only party expressing an interest in the Class A allotment at Tiptonville. Twin States points out that Thunderbolt, in its own pleading, minimized the importance of the population and commerce around Tiptonville, thus it believes that Thunderbolt has advanced its proposal only because it wishes to expand the service area of its station at Martin. Furthermore, Twin States notes that since Thunderbolt already operates Station WCMT(FM) at Martin and Station WCDZ(FM) in Dresden, Tennessee, it has failed to show that its proposal would be permitted under the Commission's multiple ownership regulations. Finally, Twin States points out that Thunderbolt has announced that it would not necessarily reimburse WWEZ(FM) for the costs WWEZ(FM) would incur in changing its channel in the event Thunderbolt's proposal is adopted by the Commission. It argues that Thunderbolt failure to accept responsibility for covering the expenses that Station WWEZ(FM) will incur, mandates the denial of this rule making.

permit and deleted the call sign. Hailey states on August 22, 1996, WENK notified the Commission that it would not seek further appeals of the Commission action.

5. In order to proceed with the proposals in this proceeding, it is necessary to issue an Order to Show Cause to Radiocorp of Jackson, Inc., the licensee of Station WWEZ(FM), Channel 248C3, at Trenton seeking comment on why its license should not be modified to specify operation on Channel 249C3, in lieu of its present Channel 248C3. Channel 249C3 can be substituted for Channel 248C3 at Trenton at the site specified in Station WWEZ(FM)'s license, at coordinates 36-05-10 NL and 88-54-39 WL. Channel 267C3 can be substituted for Channel 267A at Martin, Tennessee, in compliance with the Commission's minimum distance separation requirements with a site restriction 14.1 kilometers (8.8 miles) northwest, at coordinates 36-26-09 NL and 88-57-30 WL. Channel 247A can be substituted for Channel 267C3 at Tiptonville with a site restriction of 3.1 kilometers (1.9 miles) south, at coordinates 36-21-03 NL and 89-28-11 WL.

6. Although Radiocorp of Jackson, Inc., is provided an opportunity to object to the proposed channel change, this Order does not afford an additional opportunity to comment on the merits of the proposal set forth in the Notice. See Angola, Indiana, et. al., 5 FCC Rcd 2000 (1990).

7. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Radiocorp of Jackson, Inc., licensee of Station WWEZ(FM), Channel 248C3, SHALL SHOW CAUSE why its license (BLH-930406KE) SHOULD NOT BE MODIFIED to specify operation on Channel 249C3 as proposed herein instead of the present Channel 248C3.

8. Pursuant to Section 1.87 of the Commission's Rules, Radiocorp of Jackson, Inc. may, not later than May 11, 1998, file a written statement showing with particularity why its license should not be modified as proposed in the Order to Show Cause. The Commission may call on Radiocorp of Jackson, Inc. to furnish additional information. If Radiocorp of Jackson, Inc. raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Radiocorp of Jackson, Inc. will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

9. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Order to Show Cause to the licensee of Station WWEZ(FM), Channel 248C3, Trenton, Tennessee, as follows: Radiocorp of Jackson, Inc., P.O. Box 198, Brownsville, Tennessee 38012.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202)418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding.

Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau